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No.....
IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

Warren L. Smith in his respective capacity as an active member of the 1981-1982 Panel of the CONTRA COSTA COUNTY GRAND JURY in the State of California.

Petitioner,

vs.

Contra Costa County Superior Court, Contra Costa County, et al. a State of California political entity,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WARREN L. SMITH,
IN PRO PER
1100 Bailey Rd.
Pittsburg, California
94565

Of Counsel
Contra Costa County Counsel
Deputy Gary Silber
P.O. Box 69 Co. Admin. Bldg.
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QUESTIONS PRESENTED FOR REVIEW

1. Whether MOTION FOR DEFAULT JUDGEMENT as provided under Rule 55 (b)(a) against defendants Contra Costa County Grand Jury 1981-1982, 1982-1983 Panels for failure totimely plead or otherwise defend as provided by the Federal Rules of Civil Proceedure was properly denied by the Court.
2. Whether William R. Channel is absolutely immune from prosecution, injunctive action as a matter of law while sitting as presiding judge of the County Superior Court.
3. Whether to serve and without interference, on a petite or grand jury is a federally protected right.
4. Whether acting individually or in concert with others, under the color of law, to punish a person for doing things the law clearly allows violates that person's federally protected rights.

QUESTIONS PRESENTED FOR REVIEW CONT'D.

5. Whether defendants acting in various official capacities under the color of law, hindering, impeding, punishing petitioner in his efforts to comply with the mandates of state law controlling his position as an officer of the court with threats, physical force, destruction of reputation and good name violates petitioner's federally protected rights.

6. Whether the revelation of the petitioner's votes, manner of voting and statements made during official sessions of the grand jury and said revelations being prohibited by law but performed by "custom" in violation of state statute, thus refusing to comply although so empowered, violates petitioner's federally protected rights.

QUESTIONS PRESENTED FOR REVIEW CONT'D

7. Whether the refusal of the Attorney General, State of California, District Attorney, Contra Costa County, Presi ding Judge, Contra Costa County Superior Court to enforce the provisions of the State of California Penal Code, protecting the secrecy of plaintiff's official votes and statements when so empowered, violates his federally protected rights

8. Whether the error of the District Court's Judge's ommission of a finding on the Section 1981 claims of plaintiff when dismissing plaintiff's complaint is sufficient to overturn the dismissal and remand for trial.

9. Whether the term "conclusory" having no definition listed in any of the recognized authority, taints a decision sufficiently, by being unfair, to over turn U.S. Appelate Court.

LIST OF PARTIES TO PROCEEDINGS BELOW.

Pursuant to Rule 21.1(b) of this Court, the parties in the Court of Appeals are listed as follows:

Contra Costa County, Contra Costa County Superior Court, Contra Costa County Grand Jury 1981-1982, 1982-1983 Panels, William R. Channel presiding judge, Daniel Artega, Rile Benford, Salvador Billeci, Sari Jean Conner, Sterling Crouch, Aura Edwards, Patricia Emig, William Fahy, Leo Fontana, Frances Greene, Maxine Gross, Louis Mangini, Esther McIntyre, Norman Pease, Andor Polgar, John Sparacino, John Trantina, Harriett Webb each in his respective capacity as a member of the County Grand Jury; Melvryn Wingett county administrator; Robert Jornlin, Stefanie Guymn, Tony Bruno each in his capacity a county employee; Stanley Garvin in his capacity as a captain in the County Sheriff's Dept.

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No.....

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

WARREN L. SMITH, in his respective capacity as an active member of the Contra Costa County Grand Jury, proprietor of a lawful retail establishment and rancher, registered electrical engineer,

Petitioner,

vs,

Contra Costa County Superior Court, et. al,

Resondents.

PETITION FOR WRIT OF CETIORARI

TO THE UNITED STATES COURT OF

APPEALS FOR THE NINTH CIRCUIT.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of United States:

Petitioner Warren L. Smith, in his capacity as an active member of the Contra Costa Grand Jury, 1981-1982 Panel, businessman, rancher, registered electrical engineer, respectfully prays that a Writ of Certiorari issue to review the judgement

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of the United States Court of Appeals for the Ninth Circuit finally entered on June 29, 1984, in case No. 83-1690 of that Court, and District Court No. C83-3351RPA.

OPINIONS BELOW

The opinion of the Court of Appeals is officially reported in a Memorandum dated June 5, 1984 and appears at Appendix A of this petition. The Order of the Court of Appeals denying petition for rehearing appears at Appendix B of this petition. The Judgement of the District Court as to plaintiff's First Amended Complaint appears at Appendix C of this Petition. The Judgement of the District Court as to plaintiff's Second Amended Complaint appears at Appendix D of this Petition.

JURISDICTION

The opinion of the Court of Appeals was filed and entered on June 5, 1984.

JURISDICTION CONT'D.

A timely petition for rehearing by the petitioner was denied and rejected by order of the Court of Appeals filed on June 29, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED U.S.C.

Section 1343, entitled Civil Rights and Elective Franchise of Title 28 District Courts; Jurisdiction, of the United States Code, provides in pertinent part as follows:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprevation of any right or privilege of a citizen of the United States, done in the furtherance of any conspiracy mentioned in Section 1985 of

U.S. STATUTES INVOLVED CONT'D.

Title 42:

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote;

STATUTES INVOLVED U.S.C. CONT'D

Section 1983, Title 42 of the Health and Welfare Code provides as follows:

" Every person who, under color of any statutes, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

Section 1985(2), Title 42 of the Health and Welfare Code, provides in pertinent part as follows:

"------; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or Territory, with intent to deny to

STATUTES INVOLVED U.S.C. CONT'D

any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;" (Emphasis added)

Section 1986 of the Health and Welfare Code Title 42, provides as follows:

"Every person who, having knowledge that any of the wrongs conspired to be done and mentioned in Section 1985 of this Title, are about to committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and

STATUTES INVOLVED U.S.C. CONT'D

such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; ----------."

STATUTES INVOLVED STATE OF CALIF.

State of California Penal Code as follows:

Section 914, provides, "When the grand jury is impaneled and sworn, it shall be charged by the court. In doing so, the court shall give the grand jurors such information as it deems proper, or as required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.";

Section 919(c) provides as follows: " The grand jury shall inquire into the wilful or corrupt misconduct in office of public officers of every description within the county.";

STATUTES INVOLVED STATE OF CALIF.CONT'D

Section 918 provides,"If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he shall declare it to his fellow jurors, who shall thereupon investigate it.";
Section 924 provides, "Every grand juror who wilfully discloses the fact of an information or indictment having been made for a felony, until the defendant is arrested, is guilty of a misdemeanor.";
Section 924.1 provides, "Every grandjuror except when required by a court, wilfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of grand jury has said, or in what manner he or ary grand juror has voted on a matter before them, is guilty of a misdemeanor.";
Section 924.3 provides, " A grand juror cannot be questioned for anything he may

STATUTES INVOLVED STATE OF CALIF. CONT'D

say or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.";

Section 939 provides, "No person other than those specified in Article 3 (commencing Section 934), Chapter 3 of this title and in Section 939.1 is permitted to be present during the session of the grand jury except the members and witnesses actually under examination. No person shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes upon any matter before them."(Emphasis added).;

Section 901 provided inpertinent part as follows:

(b) "If the superior court so decides, the

STATUTES INVOLVED STATE OF CALIF. CONT'D.

901(b) cont'd. presiding judge may name four regular jurors not previously so named, who served on the previous grand jury and who so consent, to serve for a second year."

Section 893 provides in pertinent part as follows:

893(b) "A person is not competent to act as a grand juror if any of the following apply:

893(b)(2) "The person has been discharged as a grand juror in any court of this State within one year."

(Emphasis added)

STATEMENT OF THE CASE

State of California Superior Court Judge E. Patricia Herron, the grand jury judge 1980-1981 panel, discharged the entire panel including, the three named hold-over jurors, John Trantina, Maxine Gross,

STATEMENT OF THE CASE CONT'D.

Patricia Emig.

State of California Superior Court Judge David A. Dolgin, the grand jury judge 1981 -1982 panel selected the members for the new jury and swore them in together with the three named holdover jurors, discharged from the 1980-1981 panel.

Upon completion of the organizational requirements of the grand jury, a challange was made as to the competency of the three holdover, discharged and resworn jurors, John Trantina, Maxine Gross, Patricia Emig. It was further complained the presence of these three jurors during deliberations and voting violated the expressed mandates of California Penal Code Sections 924.1, 924.3, 939. All complaints were made in accordance with the mandates of Penal Code Section 918.

The refusal of the grand jury to take any action violated Penal Code Section 919(c).

STATEMENT OF THE CASE CONT'D

The grand jury further violated the directives of State of California Penal Code Sections 924.1, 924.3, 939 by revealing how and in what manner the petitioner voted on matters lawfully before the grand jury to the superior court clerk for typing and printing for distribution.

A complaint was issued stating the violations to the grand jury and again the grand jury refused to take any action.

The aforestated statements of violations were then submitted to the presiding judge, William R. Channel for his action.

Judge William R. Channel,having the knowledge supported by documentary evidence of these violations occuring and about to occur and having the power to prevent the commission of these wrongful acts, took no action to correct or prevent. The judge in responding to the requested written complaint directed to him,

STATEMENT OF THE CASE CONT'D

stated that if the petitioner could not get along with his fellow jurors, he should resign from the grand jury.

In attempting to comply with the mandates of State of California Penal Code Section 918 and reporting, declaring to the grand jury that public offenses were and are being committed, petitioner was subjected to the following:

1. Deprivation of the privacy of vote guaranteed by state law as a grand juror, equal protection under the law, and as provided in Sections 924.1, 924.3, 939, State of California Penal Code.
2. Punishment inflicted by employees of Contra Costa County upon the petitioner for attempting to enforce the laws of the People of the State of California as was his duty mandated by state law, such as is prohibited by federal law Title 42 Section 1985 United States

STATEMENT OF THE CASE CONT'D

Code.

3. The furtherance of the conspiracy of the grand jury and other county employees to deprive the petitioner of equal protection under the law and to punish him for doing that which was clearly, not only permitted but mandated by law, was achieved by the refusal of the presiding judge, William R. Channel to exercise his power to prevent the wrongful acts of revealing the statements and votes of the petitioner made during official sessions of the grand jury.

4. The threat of being incarcerated as made to not only the petitioner but to his wife, Virginia Smith by the County Counsel of Contra Costa County had a very chilling effect uponthe principles. Especially so since, Warren and Virginia Smith have a ranch on land zoned for

STATEMENT OF CASE CONT'D.

agriculture and operate a retail feed and sell articles of animal husbandry for which they obtained the proper Use Permits from the county. They were threatened with arrest for doing those things which the law clearly allowed, and in the pursuit of maintaining a lawful retail sales business duly registered with the State of California Board of Equalization as required by law.

CONDUCT OF DEFENDANTS

Grand Jury:

Whether acting as individuals or as the grand jury, jurors were not exempt or did they have any priviledges or immunitys allowing the violation of the penal statutes and prohibiting prosecution. These statutes Stateof California Penal Code Sections 924.1, 924.3. 939 are among those enacted to control the actions of

CONDUCT OF DEFENDANTS CONT'D

Grand Jury Cont'd.

grand juries and jurors; in specific instances, providing for criminal prosecution of jurors. The established custom of the grand juries of Contra Costa County, of supplying the hand written notes taken during official sessions, containing the opinions and votes made by individual jurors to Ellaine Abbott, the Superior Court Secretary, for typing and reproduction, violates the mandates of the penal code sections controlling the conduct of the grand j rors.

Due process was denied the petitioner through the official action of the grand jury to censor the petitioner, based on a motion of juror Billeci and seconded by juror McIntyre, without any specification of authority to proceed in this manner other than Billeci's statement " Congress censors their members so why can't we?"

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CONDUCT OF DEFENDANTS CONT'D.

Grand Jury Cont'd:

No hearing was held, no charges were made, no opportunity was afforded petitioner to make a defense, nothing, but the motion to censor, passed by all members as if the petitioner was tried in absentia and agreement was reached as to how to proceed and to vote. The grand jury under the leadership of foreman John Sparacino did indeed convene for regular meetings, deliberately excluding the petitioner and denying his right to be a participating grand juror. The State of California by enacting section 924.1 of the penal code removed the insulation of immunity from prosecution for each grand juror, the same effect as has section 924.

The grand jury has been described as a judicial body, a common-law institution which has no independent existance but is a part of and an adjunct to court, in the

case of State ex rel. Martin vs. Michell Fla. App., 188 So.2d 684, 686.

People vs. Pipes, 3 Cal. Rptr. 814, 818, 179 C.A. 2d 547 established the number of grand jurors to make a quorum and the function of the grand jury, "Grand Jury is an investigatory and inquisitorial body and takes evidence to determine whether any crimes have been committed which warrent return of one or more indictments, and any evidence taken in course of its investigation may be considered by it in determining whether the particular indictment should be found, so long as at least 12 grand jurors who heard all of the evidence so considered concur in finding the indictment. Whenever less than fifteen jurors comprised the grand jury panel of which the three alleged incompetent jurors were a part, a legal quorum was lacking to conduct any business.

CONDUCT OF DEFENDANTS CONT'D

The findings of the courts , the grand jury is without independent existance and not a judicial tribunal but rather a part of and an adjunct to court gives testimony that the grand jury had no power to exclude any member from a convening to consider grand jury business, no power to ignore the mandates of the State of California Penal Code as hereinenumerated, no power to censor a member of the grand jury, no power to take punitive actions against a member of the grand jury, no power to investigate any citizen in the absence of the commission of a triable crime, no power to adjudicate or render a judgement against anyone. The grand jury did so act in this manner and contrary to the mandates of law governing their actions.

Presiding Judge:

On January 13, 1982 , a written request for the presiding judge, William R.

CONDUCT OF DEFENDANTS CONT'D

Presiding Judge Cont'd:

Channel's action. Contained therein were the allegations of the incompetency of grand jurors John Trantina, Maxine Gross, Patricia Emig, the unathorized and unlawful disclosures of statements and votes of grand jury members made during an official meeting or meetings, together with the aforementioned penal code sections violations. As presiding judge, William R. Channel possessed the power to correct and prevent the continued violations and did so refuse, thereby closing the only avenue of legal recourse to the petitioner for redress by joining and furthering the unlawful actions of the grand jury members and other members of the judiciary. A criminal complaint was made to the district attorney's office alleging these violations of the penal code by the members of the grand jury. The district att-

CONDUCT OF DEFENDANTS CONT'D.

orney refused to prosecute the violations of the aforementioned statutes by members of the grand jury on the basis of being an action against the grand jury members. State statutes provide criminal prosecution for violation of the penal provisions can only be initiated by the district attorney or the State of California attorney general and no action can be taken to veto the decisions of the district attorney or the attorney general refusing to act. It was for this reason that a last resort appeal for action was made to William R. Channel in his ministerial function as presiding judge of the Superior Court of Contra Costa County.

Tony Bruno, Planning Dept. Contra Costa:

As a law enforcement officer of the County Planning Dept, Tony Bruno issued and caused to be issued threats of arrest to the petitioner and his wife,

CONDUCT OF DEFENDANTS CONT'D

for violating county ordinances in their lawful operation of retail businesses for which they obtained the proper use permit allowing variance from the agricultural zoning. The operation of the raising of livestock requires use of various vehicles for animal husbandry. These vehicles wear out and when they do, they are stored on the property and utilized for spare parts to keep the active equipment running. This storing of vehicles in the pursuit of farming is permitted by state statute, and specifically permitted in Contra Costa County ordinance Chapter 430-2 Section 430-2.006 " Exemptions". "This division shall not apply to:

(2) A vehicle, or parts thereof, which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or junkyard,

CONDUCT OF DEFENDANTS CONT'D

(2) Cont'd

or when such storage or parking is otherwise necessary to the operation of a lawfully conducted business or commercial enterprise." (Emphasis Added).

These threats occured while petitioner was a member of the county grand jury and after he challanged the competency of the three discharged and resworn jurors.

Stanley Garvin Captain Sheriff's Dept.:

As a direct result of conversations with, and the urgings of County Enforcement Officer, Tony Bruno, Stanley Garvin did use his authority to detain the petitioner against his will for the purpose of coering the petitioner into granting Tony Bruno permission to enter upon their private property for the purpose of taking photographs to be used as evidence in proceedings against petitioner and his wife.

CONDUCT OF DEFENDANTS CONT'D.

Stefanie Guynn Social Service Dept.:

In accordance with the mandates of section 918 of the penal code, the petitioner observed the unsafe operation of an official vehicle of the county, driven by Stefanie Guynn and further observed this vehicle entering the parking lot of a fast food restaurant at approximately 1530 hrs. suggesting improper use of public property, and investigated properly identifying himself as a member of the grand jury.

Stefanie Guynn issued a report in an attempt to divert attention from herself, that violated the provisions of State of California Penal Code Sections 257 and 258 controlling libel and slander in that order and further acted in a manner that was in contempt of court.

Robert Jornlin, Director of Social Welfare:

Robert Jornlin futherence of the attempts of defendant Guynn to injure the petit-

CONDUCT OF DEFENDANTS CONT'D

ioner inhis lawful discharge of his duties as mandated California Penal Code Section 918 did make him a co-conspirator and equally answerable to a contempt citation together with the violations of State of California Penal Code Sections 257, 258 and United States Code Title 18 Sections 241, 242, 245 and Title 42 Sections 1983, 1985.

Melvryn Wingett County Administrator:

Melvryn Wingett's furthered the actions Stefanie Guynn and Robert Jornlin, joining their conspiracy to punish the petitioner, injure him in his person for lawfully enforcing and attempting to enforce the laws of the State of California for the People of the State of California and as mandated by State statute, by publishing and distributing the tainted and corrupt material compiled by Guynn and submitted to Jornlin, to the presiding judge, members of the

CONDUCT OF DEFENDANTS CONT'D.

county board of supervisors, the foreman of the grand jury. The submission of this material to the presiding judge for his judgement should have brought about at least an inquiry as to the possibility of a comtempt of court proceedings against Guynn, Jorlin, Wingett for their part in the issuance of the libelous material in the effort to injure a grand juror attempting to enforce the laws as mandated.

Wingett in joining with Guynn and Jornlin became equally answerable for violations of State of California Penal Code Sections 257, 258 and United States Code Title 18 Sections 241, 242, 245, and Title 42 Sections 1981, 1983, 1985.

Presiding judge, William R. Channel having this material in his hands neglected or refused to uphold the dignity and integrety of the court by protecting an officer of the court in his official cap-

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CONDUCT OF DEFENDANTS CONT'D.

acity against statements made with overt intent to injure said person in his person and to impede his function as an officer of the court and as if such statements were made in open court.

REASONS FOR GRANTING THE WRIT.

I

The petitioner is entitled to a lawful and enforceable interpretation, he should be awarded damages for the breach of his rights to the fullest expectations of the laws.

1. The Supreme Court in Monell v. Department of Social Services reexamined the legislative history of the 1871 law and concluded that its previous reading of that history was in error and now holds that a municipality or other local governing body is a "person" and may be sued for relief under 42 U.S.C.A. Section 1983. Similar changes in the appli-

REASONS FOR GRANTING THE WRIT CONT'D

cation of the Supreme Court's conclusions have occured in Kush v. Rutledge decision, setting aside in part the class based individious discriminatory animus allegation requirement applied to 42 U.S.C.A. Section 1985 by the findings in Griffen v. Breckenridge.

The Civil Rights Act of 1871 is described by Congress as "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication.". Section 1985(2) refers to any citizen being denied equal protection of the laws, or to injure him or his property, no reference is made to a racial or class based individious discriminatory animus allegation in order to receive the benefits that congress intended.

The Supreme Court has further reexamined the application of the absolute immunity doctrine as applied to judges and the

REASONS FOR GRANTING THE WRIT CONT'D.

officers of the court in the matter of Pulliam v. Allen (Judicial immunity), Tower v. Glover (Public defenders held not immune from liability under 42 USCS Section 1983), Bynum v. O'Malley (District Attorney held not immune in ministerial capacity under 42 USCS Section 1983), Supreme Court of Virginia v. Consumers Union of the United States (Virginia Supreme Court held subject to suit under 42 USCS Section 1983 in its enforcement capacity as to prohibition against attorney advertising, but immune from suit and not subject to award of fees in its legislative capacity.), and in conclusion no judicial immunity exists from a prosecution on a criminal action for any judicial officer. By declining to recognize the criminal acts so alleged and the refusal of the administrating aurthority to prevent or aid in the prevention of

REASONS FOR GRANTING THE WRIT CONT'D.

the commission of these criminal acts by the United States Court of Appeals undercuts the respect and integrity of the law as understood by the average reasonable man. It is very unsettling to read the mandates of the criminal statutes enacted to safeguard the privacy of a grand juror's vote and statements made during an official deliberation and have the United States Court of Appeals uphold the refusal of the Superior Court Judge, William R. Channel to enforce those criminal statutes aforementioned. It is for these reasons as previously stated, petitioner requests this Court to reconsider the immunity umbrella shielding the presiding judge's ministerial functions and the racial or class-based invidiously discriminatory animus allegation requirement as applied to Section 1985(2).

REASONS FOR GRANTING THE WRIT CONT'D.

II

The United States Court of Appeals stated the plaintiff's Section 1983 claims fail for the following reasons:

1. Count One. "It is impossible for the court to determine what alleged conduct of the numerous defendants caused the damages asserted by plaintiff. As plaintiff's amended complaint contains only vague and conclusory* allegations of civil rights violations, it was properly dismissed."

Rebuttal:

In petitioner's petition for rehearing FRAP #40 to the United States Court of Appeals, the status of the term conclusory was attacked as being undefined and not appearing in West's "Words and Pharses, Vol. 8 at pp583, Black's Law Dictionary, 4th at pp362, Webster's 3rd International at pp471, Words and Phrases 1983 Cum. at pps 120, 121. Without a proper definition,

REASONS FOR GRANTING THE WRIT CONT'D

II Cont'd

the petitioner is under an unfair disadvantage, not knowing what the Court was talking about. The petitioner is entitled to an intelligible response from the Court when rendering its decision. The United States Court of Appeals did not follow the mandates of Rule 8 of the U.S. Rules of Civil Proceedure and as follows:

A. "Pro se complaints are to be liberally construed.",Freeman v. Lockhart, C.A. Ark. 1974, 503 F.2d 1016; Taterka vs. Wisconsin Tel. Co., D.C. Wis. 1975, 394 F. Supp. 862; X vs. Gray, D.C.Wis., 1974, 378 F. Supp. 1185, affirmed 558 f.2d 1033.

"Pleadings drafted by layman are to be interpreted by application of less rigid standards than those applied to formal documents prepared by lawyers." Hansen v. May, C.A.Idaho 1974, 502 F.2d

REASONS FOR GRANTING THE WRIT CONT'D.

II Cont'd.

1033. "Courts must construe pro se complaints generously." Jackson v. Statler Foundation, C.A. N.Y. 1974 496 F.2d 623. "Under these rules, it was duty of court to read complaint liberally to determine whether facts set forth justified taking jurisdiction other than those most artistically pleaded." New York State Waterways Ass'n Inc. v. Diamond, C.A.N.Y. 1972, 469 F. 2d 419."On a motion to dismiss, complaint must be construed favorably to plaintiff." Robinson v. Mammoth Life & Accident Ins. Co. C.A. Ill. 1971 454 F.2d 698. The District Court did not comply with the mandates of the statutory law of Rule 8 U.S. Rules of Civil Proceedure and the evolving case law. Judge Aguilar of the United States Court during a hearing of defendants' motion to dismiss second complaint issued the following prejudical

REASONS FOR GRANTING WRIT CONT'D.

II Cont'd

statements:

"We judges have to stick together." and "Now, with respect to the claim against Judge Channel, I am going to tell you now that it is my intention to dismiss that because we judges have a very favored position in the law: The Supreme Court doesn't allow anyone to sue us for things we do when we are acting as judges. And what Judge Channel did here that you're complaining about, he did while sitting as the presiding judge of the Superior Court in the County of Contra Costa. So I'll indicate to ycu as to him I'm going to dismiss that. I have to. That's the law." .

The findings of the Supreme Court in the matter of Pulliam v. Allen 80 L Ed 2d 655, gives lie to the statement of total immunity for judges and acts of judges in performance of ministerial duties.

REASONS FOR GRANTING WRIT CONT'D.

II Cont'd

2. Count Two. "Any violation of the California grand jury statute by other grand jurors does not establish a violation of any federal right, which is an essential element of a Section 1983 claim. Gomez v. Toledo, 446 U.S. 635, 640 (1980). While it may violate a liberty right for the criminally accused, the plaintiff was not within that protected interest.

Rebutal:

The members of the grand jury acting as a grand jury and not as individiuals, under the color of law and custom refused to comply with the mandates of the penal code protecting the privacy rights of the petitioner. Federal statutes provide for the privacy of the ballot in a federal election and as the secrecy provisions are too enumerated in Section 14007 of the State

REASONS FOR GRANTING THE WRIT CONT'D.

II Cont'd.

of California Election Code. As the secrecy of an individual's ballot is protected, the legislature placed equal or greater importance upon the secrecy of the grand juror's vote and statements made during an official deliberation to the extent that not even the grand jury judge was or is allowed to be present. The refusal to comply with these provisions of state law when having the power to correct or prevent further violations and doing so under the pretext of custom, color of law did furnish the vehicle for action in the Federal Courts. At this time, it is important to reestablish the fact that a grand jury is a part of and extention of the Superior Court in this state.

3. Count Three.

"One does not have a constitutionly protected right in his reputation."

REASONS FOR GRANTING THE WRIT CONT'D.

II Cont'd

Paul v. Davis, 424 U.S. 693, 712 (1976)

One of the most valuable asset any man has is his reputation, wars have been fought, men have died because a man's name was smeared. These facts are historic and well recorded. The U.S. Court of Appeals'conclusion as to a man's reputation is not worthy of a rebutal to the individuals rendering this decision. However, the Court of Appeals as a body requires a reply. It has been alleged the defendants in this action, as a means of punishing the petitioner for attempting to enforce the dictates of his office, engaged in one form or another, the practise of destroying the reputation of the petitioner. In so doing, the defendants were technically in contempt of court but this would have been futile to pursue since action on a criminal viola-

REASONS FOR GRANTING WRIT CONT'D

II Cont'd

tion was refused by the District Attorney and the Presiding Judge of the Superior Court in whom rested the power to correct and or prosecute. This deprived the petitioner of substantial rights guaranteed, under the color of their authority as State Officers. The abuse of power or misuse of power can be leveled at these and all state officers implicated in this action and did result in the deprivation of equal protection of the laws and due process for the petitioner using their offices to refuse enforcement of the laws designed to protect his office and person from injury.

4. Count Four.

"Mere taxpayer status does not create standing to bring a lawsuit in federal court." Frothingham v. Mellon, 262 U.S. 447, 487 (1923).

REASONS FOR GRANTING THE WRIT CONT'D

II Cont'd.

Rebutal. The pleading of taxpayer status was offered to establish the plaintiff's position as as interested party. However it seems the Court seized upon another insignificant point in order to cloud the issue and possibly confuse the petitioner which of course, is not difficult for someone having a doctorate in his field to accomplish. It does raise the question to why the all out effort to dismiss this matter even before discovery had commenced. Documents were submitted as evidence supporting the allegations of complaints.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be granted.

Dated: Sept. 15, 1984.

Respectfully submitted,

Warren L. Smith pro se.

APPENDIX A. I

Opinion.

In the United States Court of Appeals for the Ninth Circuit.

Warren L. Smith, Plaintiff/Appellant vs. Contra Costa County Superior Court, County of Contra Costa et al., Defendants, Respondants. Nos.C83-1690; DC #C82-3351RPA Filed: June 5, 1984.

Appeal from the United States District Court for the Northern District of California

Robert P. Aguilar, District Judge Presiding, submitted April 3, 1984**

Before: SCHROEDER, FERGUSON and NELSON, Circuit Judges.

"The district court properly denied plaintiff's motion for a temporary restraining order and preliminary injunction. The dismissal of the second amended complaint without leave to amend was proper because it failed to state a claim for which

relief could be granted under 42 U.S.C. Section 1983 or Section 1985(2).

The plaintiff's claim under Section 1985 (2) fail because the plaintiff does not allege any racial or class based invidiously discriminatory animus. Such an allegation is required to support a Section 1985(2) action which claims interference with state, not federal, judicial process. Kush v. Rutledge, ___ U.S. ___, 103 S.Ct. 1483, 1486 (1983).

Footnotes. *The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by wriiten opinion. Accordingly, it is ordered that disposition be by memorandum, foregoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

** The panel unanimously agrees that this case is appropriate for submission without oral argument.

Plaintiff's Section 1983 claims fail for the following reasons:

1. Count One. It is impossible for the court to determine what alleged conduct of the numerous defendants caused the damages asserted by plaintiff. As plaintiff's amended complaint contains only vague and conclusory allegations of civil rights violations, it was properly dismissed. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.1982).
2. Count Two. Any violation of the California grand jury statute by other grand jurors does not establish a violation of any federal right, which is an essential element of a Section 1983 claim. Gomez v. Toledo, 446 U.S. 635, 640 (1980). While it may violate a liberty

right for the criminally accused, plaintiff was not within that protected interest.

3. Count Three. One does not have a constitutionally protected right in his reputation. Paul v. Davis, 424 U.S. 693, 712 (1976).

4. Count Four. Mere taxpayer status does not create standing to bring a lawsuit in federal court. Frothingham v. Mellon, 262 U.S. 447, 487 (1923).

Because the underlying claims lacked merit, the district court did not abuse its discretion in denying plaintiff's motion for a temporary restraining order and a preliminary injunction. See Sports Form, Inc. v. United Press International, Inc., 686 F.2d 750, 753 (9th Cir. 1982).

Finally, nothing in the record indicates that the district court abused its discretion in finding that default shouldnot be

entered against two defendants because of excusable neglect. See Savarese v. Edrick Transfer and Storage, Inc., 513 F.2d 140, 146 (9th Cir. 1975). AFFIRMED.

APPENDIX B

ORDER

In the United States Court of Appeals for the Ninth Circuit, Northern Cailifornia.

Warren L. Smith, Plaintiff-Appellant, vs. Contra Costa County Superior Court, et al. Defendants-Appellees. Nos. 83-1690, DC-C-82-3351-RPA

Filed: June 29, 1984

Before: Schroeder, Ferguson, and Nelson, Circuit Judges.

The petition for rehearing filed by plaintiff-appellant on June 8, 1984 is DENIED.

ORDER GRANTING MOTION TO DISMISS

(First Amended Complaint)

United States District Court, Northern District of California.

Warren L. Smith, Plaintiff, vs. Contra Costa County Superior Court, et al., Defendants. Case No. C 82-3351 RPA.

DATED: Oct. 29, 1982

This cause came on to be heard on motion to Dismiss pursuant to Rule 8 and Rule 12b(6) of the Federal Rules of Civil Proceedure, and the court having considered the authority submitted by the parties; having heard oral argument; and good cause appearing therefore,

IT IS ORDERED that defendent's motion to dismiss with leave to amend be and the same is hereby granted.

signed/ Robert P. Aguilar

United States District Judge

ORDER

United States District Court, Northern District of California

Warren L. Smith, Plaintiff, vs. Contra Costa County Superior Court, et al., Defendants. Case No. C-82-3351 RPA

(Dismissal of Second Amended Complaint)

Filed: February 4, 1983

The above-captioned case came before the Court for a regularly scheduled hearing on February 3, 1983. At that hearing the Court heard argument on the following motions:

1) plaintiff's motion for a temporary restraining order and preliminary injunction; 2) plaintiff's motion for entry of default judgement against two defendants; 3) defendants' motion to join two defendants in the pending motion to dismiss; and 4) defendants' motion to dismiss plaintiff's complaint. Having recei-

ved, read and considered the parties written arguments, and heard the parties oral arguments, and for good cause appearing, the Court makes the following order.

With regard to plaintiff's motion for e entry of default judgement against defendants Contra Costa County Grand Jury 1981-1982 Panel and Contra Costa County Grand Jury 1982-1983 Panel, the Court finds tnat the defendants' failure to timely file an answer to plaintiff's complaint was tne result of excusable neglect. Therefore, the Court denies plaintiff's motion for entry of default judgement. Furthermore, tne Court grants defendants' motion to join the two Grand Jury Panels in the motion to dismiss plaintiff's complaint.

Tne Court finds that tne plaintiff has not stated any grounds for issuance of a temporary restraining order or preliminary injunction under the prevailing stan-

dard in the Ninth Circuit. William T. Inglis and Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86 (9th Cir. 1975). Plaintiff has shown neither irreparable injury nor likelihood of success on the merits. Nor has plaintiff demonstrated that the balance of hardships tips decidedly in his favor.

Accordingly, the Court denies plaintiff's motion for temporary restraining order and preliminary injunction.

Defendants move to dismiss plaintiff's claims under 42 U.S.C. Section 1983 on the grounds that plaintiff has not alleged any substantive infringement of his federal constitutional or statutory rights. The Court agrees with defendants' position. Furthermore, the Court has once before given plaintiff leave to amend his comlaint so that plaintiff could attempt to state a proper claim under Section 1983.

In light of these facts, the Court now grants defendants' motion to dismiss plaintiff's Section 1983 claims.

Defendants also seek to have plaintiff's claims under U.S.C. Section 1985 dismissed because plaintiff has not alleged any class based inviiously discriminatory animus as required by the Supreme Court. Griffen v. Breckenridge, 403 U.S. 88 (1971). Again the Court concurs with defendants' argument. Thus, the Court dismisses plaintiff's claims under 42 U.S.C. Section 1985.

Given that the Court has dismissed each of the plaintiff's claims, the Court hereby dismisses plaintiff's complaint.

IT IS SO ORDERED.

DATED: February 4, 1983

signed/Robert P. Aguilar
United States District Judge

Additional argument for granting Writ of Certiorari based upon the omission of the order to rule upon the plaintiff's 42 U.S. C. Section 1981 claims.

Petitioner requests that he be permitted to cite the findings of the Court in Finch v. McKittrick 83L. Ed. 246., Skinner v. Stateof Oklahoma ex rel Williamson Okl. 62 S. Ct. 1110, 1113, 316 U.S. 535, 86 L. Ed. 1655. "When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made a "discrimination" as invidious as if a particular race or nationality had been selected for oppressive treatment."

The United States District Court dismissed the plaintiff's complaint by stating the Court has dismissed each of the plaintiff's claims, in error. The Court did not dismiss plaintiff's Section 1981 claims.